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6 **BEFORE THE**
7 **BOARD OF REGISTERED NURSING**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2012-502

11 **WENDI GUSTAFSON, AKA WENDI SUE**
12 **GUSTAFSON**

DEFAULT DECISION AND ORDER

13 6929 Londonderry Court
14 Rancho Cucamonga, CA 91739

[Gov. Code, §11520]

15 Registered Nurse License No. 546775

16 Respondent.

17 **FINDINGS OF FACT**

18 1. On or about February 23, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
20 of Consumer Affairs, filed Accusation No. 2012-502 against Wendi Gustafson, aka Wendi Sue
21 Gustafson ("Respondent") before the Board of Registered Nursing. (Accusation attached as
22 Exhibit A.)

23 2. On or about August 12, 1998, the Board of Registered Nursing ("Board") issued
24 Registered Nurse License No. 546775 to Respondent. The Registered Nurse License expired on
25 November 30, 2005, and has not been renewed.

26 3. On or about February 23, 2012, Respondent was served by Certified and First Class
27 Mail copies of the Accusation No. 2012-502, Statement to Respondent, Notice of Defense,
28 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
and 11507.7) at Respondent's address of record which, pursuant to California Code of

1 Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board,
2 which was and is:

3 6929 Londonderry Court
4 Rancho Cucamonga, CA 91739.

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
7 124.

8 5. On or about March 21, 2012, Respondent failed to file a timely Notice of Defense.

9 6. Government Code section 11506 states, in pertinent part:

10 (c) The respondent shall be entitled to a hearing on the merits if the respondent
11 files a notice of defense, and the notice shall be deemed a specific denial of all parts
12 of the accusation not expressly admitted. Failure to file a notice of defense shall
13 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
14 may nevertheless grant a hearing.

15 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
16 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2012-
17 502.

18 8. California Government Code section 11520 states, in pertinent part:

19 (a) If the respondent either fails to file a notice of defense or to appear at the
20 hearing, the agency may take action based upon the respondent's express admissions
21 or upon other evidence and affidavits may be used as evidence without any notice to
22 respondent.

23 9. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in Accusation No. 2012-502, finds
28 that the charges and allegations in Accusation No. 2012-502, are separately and severally, found
to be true and correct by clear and convincing evidence.

1 10. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement is \$740.00 as of March 21, 2012.

4 **DETERMINATION OF ISSUES**

5 1. Based on the foregoing findings of fact, Respondent Wendi Gustafson, aka Wendi
6 Sue Gustafson has subjected her Registered Nurse License No. 546775 to discipline.

7 2. The agency has jurisdiction to adjudicate this case by default.

8 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
9 Nurse License based upon the following violations alleged in the Accusation which are supported
10 by the evidence contained in the Default Decision Evidence Packet in this case.

11 a. Respondent subjected her license to disciplinary action pursuant to Business and
12 Professions Code ("Code") section 2761, subdivision (a)(4) of the Code in that she was
13 disciplined by the State of Maine Board of Nursing ("Maine Board") due to drug diversion and
14 substance abuse. The disciplinary action by the Maine Board and the circumstances underlying
15 the disciplinary action are described in more particularity in Accusation No. 2012-502, inclusive,
16 and herein incorporated by reference.

17 b. Respondent subjected her license to disciplinary action pursuant to section 2762,
18 subdivision (a) of the Code on the grounds of unprofessional conduct because she falsified
19 hospital and patient records in order to obtain Percocet and other Schedule II drugs, failing to
20 exercise the learning, skill, or care of a competent registered nurse. The conduct is described in
21 more particularity in Accusation No. 2012-502, inclusive, and herein incorporated by reference.

22 c. Respondent subjected her license to disciplinary action pursuant to section 2761,
23 subdivisions (a) and (e) of the Code for obtaining Percocet and other Schedule II drugs, in
24 violation of the law and for falsifying patient records to do so. The conduct is described in more
25 particularity in Accusation No. 2012-502, inclusive, and herein incorporated by reference.

26 d. Respondent subjected her license to disciplinary action pursuant to section 2762,
27 subdivision (b) of the Code in that Respondent admitted to using controlled substances. The
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1 admissions are described in more particularity in Accusation No. 2012-502, inclusive, and herein
2 incorporated by reference.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 546775, heretofore issued to Respondent Wendi Gustafson, aka Wendi Sue Gustafson, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on AUGUST 6, 2012.

It is so ORDERED July 6, 2012



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

51085688.DOC
DOJ Matter ID: LA2012506152

Attachment:
Exhibit A: Accusation No. 2012-502

Exhibit A

Accusation

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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2012 - 502**

13 **WENDI GUSTAFSON, AKA WENDI SUE**
14 **GUSTAFSON**

A C C U S A T I O N

15 6929 Londonderry Court
16 Rancho Cucamonga, CA 91739

17 Registered Nurse License No. 546775

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing.

22 2. On or about August 12, 1998, the Board of Registered Nursing issued Registered
23 Nurse License Number 546775 to Wendi Gustafson, aka Wendi Sue Gustafson ("Respondent").
24 The Registered Nurse License expired on November 30, 2005, and has not been renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code ("Code") unless otherwise indicated.

1 4. Section 2750 of the Business and Professions Code provides, in pertinent part, that
2 the Board may discipline any licensee, including a licensee holding a temporary or an inactive
3 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing
4 Practice Act.

5 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
7 licensee or to render a decision imposing discipline on the license.

8 6. Section 118 subdivision (b) of the Code grants the Board jurisdiction over suspended,
9 expired, forfeited, cancelled, or surrendered licenses:

10 “The suspension, expiration, or forfeiture by operation of law of a license
11 issued by a board in the department, or its suspension, forfeiture, or cancellation by
12 order of the board or by order of a court of law, or its surrender without the written
13 consent of the board, shall not, during any period in which it may be renewed,
14 restored, reissued, or reinstated, deprive the board of its authority to institute or
continue a disciplinary proceeding against the licensee upon any ground provided by
law or to enter an order suspending or revoking the license or otherwise taking
disciplinary action against the licensee on any such ground.”

15 7. Section 2761 of the Code states:

16 “The board may take disciplinary action against a certified or licensed
nurse or deny an application for a certificate or license for any of the following:

17 (a) Unprofessional conduct, which includes, but is not limited to, the
18 following:

19 ...

20 (4) Denial of licensure, revocation, suspension, restriction, or any other
disciplinary action against a health care professional license or certificate by another
state or territory of the United States, by any other government agency, or by another
California health care professional licensing board. A certified copy of the decision
or judgment shall be conclusive evidence of that action.”

22 8. Section 2762 of the Code states:

23 “In addition to other acts constituting unprofessional conduct within the
24 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
25 person licensed under this chapter to do any of the following:

26 (a) Obtain or possess in violation of law, or prescribe, or except as
directed by a licensed physician and surgeon, dentist, or podiatrist administer to
27 himself or herself, or furnish or administer to another, any controlled substance as
defined in Division 10 (commencing with Section 11000) of the Health and Safety
28 Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Disciplinary Action by the State of Maine Board of Nursing)

10. Respondent is subject to disciplinary action under Section 2761, subdivision (a)(4) of the Code on the grounds of unprofessional conduct because she was disciplined by the State of Maine Board of Nursing ("Maine Board"), as follows:

11. On or about November 6, 2008, the Maine Board issued a Decision and Order in the disciplinary action entitled, *In re: Wendi Gustafson Licensure Disciplinary Action*. In its Decision and Order, the Maine Board revoked Respondent's license to practice registered professional nursing in the State of Maine and ordered her to pay the costs of the hearing. The circumstances underlying the revocation of Respondent's license by the Maine Board are as follows:

a. Respondent was employed by Lakewood, which is a long-term care skilled nursing facility located in Waterville, Maine.

b. In early March 2006, Lakewood's Director of Nursing Services, Elizabeth Giguere ("Giguere") became aware of the staff's concerns that Respondent was diverting drugs at the facility.

c. Giguere confronted Respondent on March 7, 2006, with the following allegations:

- i. Respondent's recordkeeping documentation was inadequate since she signed out certain narcotic drugs, including Percocet (Oxycontin), to be administered to residents, but failed to document that the drugs had been administered.
- ii. Respondent documented that she medicated several residents during her 11 p.m.-7 a.m. shift who did not require medication on dates when other nurses covered that shift. Her assessment notes did not meet the standard which mandated that a patient be assessed both before a medication is given and also after the medication is provided.
- iii. Respondent frequently made corrections by overwriting an entry on residents' narcotic records regarding the date and time of the administration of medication, whereas standard operating procedure requires that a line be drawn through the error and dated and initialed by the nurse.
- iv. Respondent made frequent corrections in the number of tablets given to residents.
- v. Respondent made it difficult to determine the date on which a medication was given since she would employ either "0000" or "2400" to denote midnight, despite Lakewood's policy of utilizing "2400."
- vi. Respondent did not explain an incident regarding a resident where her documentation sheet reveals that the individual was in no pain at 12:30 a.m., although Percocet was written on the narcotic record as being given at that time.
- vii. Respondent allegedly gave two (2) Percocet tablets to a resident at 6:30 a.m. for pain, whereas the day nurse recorded the resident's pain rating at

8:00 a.m. at 10 out of 10, which is the greatest amount of pain. The two tablets should have resulted in much less pain or sleep.

viii. Respondent recorded administering Schedule II drugs to residents at a specific time during her shift, whereas certified nurse's aides caring for the residents witnessed the individuals to be sleeping at the alleged time of administration.

ix. Respondent documented giving drugs to patients who were under the care of another charge nurse on the same shift. The documentation revealed that the residents were not in need of such medication, which could have endangered their health, especially if the charge nurse had already administered medication.

d. In response to the above, Respondent stated that she felt she had a problem. She admitted to Giguere that "...[she] stopped using about a year ago and just restarted in the last few months-since we moved. I tried to stop about a week ago, but it didn't work."

e. Lakewood reported the results of its investigation to the Maine Board and law enforcement.

f. On March 9, 2006, Lakewood terminated Respondent.

g. On August 28, 2007, Respondent pled guilty to the Class C crime of stealing drugs.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

12. Respondent is subject to disciplinary action under section 2762, subdivision (a) of the Code on the grounds of unprofessional conduct because she falsified hospital and patient records in order to obtain Percocet and other Schedule II drugs, failing to exercise the learning, skill, or care of a competent registered nurse. The conduct is more particularly described in paragraph 10 and paragraph 11, subdivisions (a) through (g), inclusive, above, and herein incorporated by reference.

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3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Drug Related Transgressions)**

5 13. Respondent is subject to disciplinary action under section 2762, subdivisions (a) and
6 (e) of the Code for obtaining Percocet and other Schedule II drugs, in violation of the law, and for
7 falsifying patient records to do so. The conduct is more particularly described in paragraph 10
8 and paragraph 11, subdivisions (a) through (g), inclusive, above, and herein incorporated by
9 reference.

10 14. Respondent is subject to disciplinary action under section 2762, subdivision (b) of the
11 Code in that Respondent admitted to using controlled substances to an extent or in a manner
12 dangerous or injurious to herself and to the extent that such use impaired her ability to conduct
13 with safety her nursing practice. The conduct is more particularly described in paragraph 10 and
14 paragraph 11, subdivisions (a) through (g), inclusive, above, and herein incorporated by
15 reference.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Board of Registered Nursing issue a decision:

19 1. Revoking or suspending Registered Nurse License Number 546775, issued to Wendi
20 Gustafson, aka Wendi Sue Gustafson;

21 2. Ordering Wendi Gustafson to pay the Board of Registered Nursing the reasonable
22 costs of the investigation and enforcement of this case, pursuant to Business and Professions
23 Code section 125.3;

24 3. Taking such other and further action as deemed necessary and proper.

25 DATED: February 23, 2012

26 *Louise R. Bailey*
27 LOUISE R. BAILEY, M.ED., RN
28 Interim Executive Officer
Board of Registered Nursing
State of California
Complainant

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